

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re:	§	Chapter 11
	§	
SERTA SIMMONS BEDDING, LLC,	§	Case No. 23-90020 (DRJ)
<i>et al.</i>,	§	
	§	
Debtors.¹	§	(Jointly Administered)
	§	
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	§	
SERTA SIMMONS BEDDING, LLC,	§	
<i>et al.</i>,	§	Adversary Proc. No. 23-09001
	§	
Plaintiffs and Counterclaim Defendant,	§	
	§	
v.	§	
	§	
AG CENTRE STREET PARTNERSHIP	§	
L.P., <i>et al.</i>,	§	
	§	
Defendants and Counterclaim Plaintiffs	§	
	§	
v.	§	
	§	
AGF FLOATING RATE INCOME FUND, <i>et al.</i>,	§	
	§	
Additional Counterclaim Defendants.	§	
	§	
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	§	

STIPULATION AND ORDER OF DIRECT APPEAL TO THE FIFTH CIRCUIT

It is hereby stipulated by and agreed between the parties in this adversary proceeding and bankruptcy proceeding, through their respective counsel:

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are as follows: Dawn Intermediate, LLC (6123); Serta Simmons Bedding, LLC (1874); Serta International Holdco, LLC (6101); National Bedding Company L.L.C. (0695); Serta Simmons Bedding Manufacturing Company (5743); The Simmons Manufacturing Co., LLC (0960); Dreamwell, Ltd. (2419); Serta Simmons Bedding Hospitality, LLC (2016); Serta Simmons Bedding Logistics, LLC (6691); Simmons Bedding Company, LLC (2552); Tuft & Needle, LLC (6215); Tomorrow Sleep LLC (0678); Serta Simmons Bedding Retail, LLC (9245); and World of Sleep Outlets, LLC (0957). The Debtors' corporate headquarters and service address for these chapter 11 cases is 2451 Industry Avenue, Doraville, Georgia 30360.

WHEREAS, there is currently pending before the U.S. Court of Appeals for the Fifth Circuit an appeal by AG Centre Street Partnership L.P., AG Credit Solutions Non ECI Master Fund, L.P., AG Super Fund Master, L.P., AG SF Master (L), L.P., Silver Oak Capital, L.L.C., Ascribe III Investments, LLC, Columbia Cent CLO 21 Limited, Columbia Cent CLO 27 Limited, Columbia Floating Rate Fund, a series of Columbia Funds Series Trust II, Columbia Strategic Income Fund, a series of Columbia Funds Series Trust I, Contrarian Capital Fund I, L.P., Contrarian Distressed Debt Fund, L.P., Contrarian Centre Street Partnership, L.P., Gamut Capital SSB, LLC, North Star Debt Holdings, L.P., Shackleton 2013-III CLO, Ltd., Shackleton 2013-IV-R CLO, Ltd., Shackleton 2014-V-R CLO, Ltd., Shackleton 2015-VII-R CLO, Ltd., Shackleton 2017- XI CLO, Ltd., Z Capital Credit Partners CLO 2018-1 Ltd., and Z Capital Credit Partners CLO 2019-1 Ltd. (collectively, the “Non-PTL Lenders”) and LCM XXII Ltd., LCM XXIII Ltd., LCM XXIV Ltd., LCM XXV Ltd., LCM 26 Ltd., LCM 27 Ltd., and LCM 28 Ltd. (collectively, “LCM”) of the Order on Summary Judgment (ECF No. 141), which appeal is before the Fifth Circuit as No. 23-20181 (the “Summary Judgment Appeal”).

WHEREAS, on June 6, 2023, following a joint trial on plan confirmation and Adversary Proceeding No. 23-9001, the Court entered its Memorandum Opinion regarding (i) Confirmation of the Debtors’ Second Amended Joint Chapter 11 Plan, as supplemented and amended; and (ii) adjudication of the claims, counterclaims, and cross-claims in Adversary Proceeding No. 23-9001 (ECF No. 1045).

WHEREAS, on June 14, 2023, the Court entered its Final Judgment in Adversary Proceeding No. 23-9001 (ECF No. 1070) (the “Final Judgment”).

WHEREAS, on June 14, 2023, the Court entered its Findings of Fact, Conclusions of Law, and Order Confirming Second Amended Joint Chapter 11 Plan of Serta Simmons Bedding, LLC and Its Affiliated Debtors (ECF No. 1071) (the “Confirmation Order”).

WHEREAS, Citadel, the Debtors, and the PTL Lenders agree that the Confirmation Order should be certified to the Fifth Circuit on direct appeal pursuant to 28 U.S.C § 158(d), where they will seek to have that appeal consolidated with the Summary Judgment Appeal currently pending before the Fifth Circuit.

WHEREAS, the Non-PTL Lenders, the LCM Lenders, the Debtors, and the PTL Lenders agree that the appeal of the Final Judgment, to the extent the parties are appealing such judgment, should be certified to the Fifth Circuit on direct appeal pursuant to 28 U.S.C § 158(d), where they will seek to have that appeal consolidated with the Summary Judgment Appeal currently pending before the Fifth Circuit.

WHEREAS, the Non-PTL Lenders and the LCM Lenders object to the Confirmation Order being (a) certified to the Fifth Circuit on direct appeal pursuant to 28 U.S.C § 158(d); and (b) consolidated with the Summary Judgment Appeal currently pending before the Fifth Circuit.

WHEREAS, the Debtors and PTL Lenders intend to file a motion asking this Court to certify the Confirmation Order for direct appeal pursuant to Federal Rule of Bankruptcy Procedure 8006 and 28 U.S.C. 158(d) (the “Motion”).

IT IS HEREBY ORDERED THAT

1. The Court hereby **CERTIFIES** the Final Judgment to the U.S. Court of Appeals for the Fifth Circuit, pursuant to 28 U.S.C. § 158(d)(2)(A), because an immediate appeal from the judgment, order, or decree would materially advance the progress of this case or proceeding.

2. The Court sets the following briefing schedule for consideration of the Motion to certify the Confirmation Order to the U.S. Court of Appeals for the Fifth Circuit, pursuant to 28 U.S.C. § 158(d)(2)(A):

- Debtors and the PTL Lenders shall file a joint opening brief by **July 5, 2023**, accompanied by a proposed order;
- Citadel shall file any joinder or opening brief by **July 6, 2023**;
- The Non-PTL Lenders shall file any response brief by **July 11, 2023, at 5 p.m. CT**;
- The LCM Lenders shall file any joinder or response brief by **July 11, 2023, at 5 p.m. CT**; and
- Debtors, the PTL Lenders, and Citadel shall file any reply briefs by **July 13, 2023, at 5 p.m. CT**.

3. This Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, or enforcement of this Order.

Dated: _____, 2023
Houston, Texas

DAVID R. JONES
UNITED STATES BANKRUPTCY JUDGE

/s/ David J. Lender

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Ltd. with respect to Plaintiffs' Claims and
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